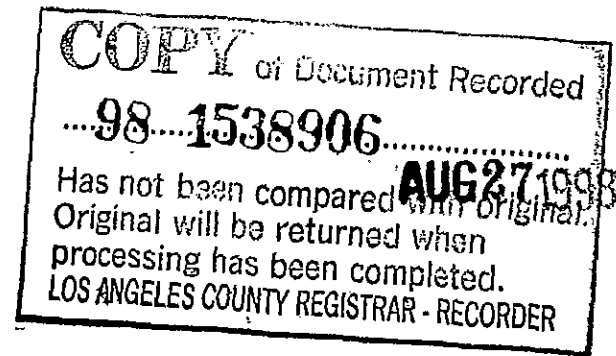


REQUESTED BY  
AND WHEN RECORDED MAIL TO:

ALLEN, MATKINS, LECK, GAMBLE  
& MALLORY LLP  
18400 Von Karman, Fourth Floor  
Irvine, California 92612-1597

Attention: R. Michael Joyce, Esq.



(Space Above For Recorder's Use)

**COVENANT AND AGREEMENT TO RESTRICT USE OF PROPERTY AND  
ENVIRONMENTAL RESTRICTION**

This Covenant and Agreement To Restrict Use of Property and Environmental Restriction ("Covenant") is made as of the 11th day of August, 1998 by BC SANTA FE SPRINGS, LLC, a Delaware limited liability company ("Covenantor"), which is the owner of certain real property situated in the City of Santa Fe Springs, County of Los Angeles, State of California, as more fully described in Exhibit "A" attached hereto and incorporated herein by this reference (the "Property") for the benefit of the CALIFORNIA DEPARTMENT OF TOXIC SUBSTANCES CONTROL, as defined in Paragraph 1.1 (the "Department"), with reference to the following facts:

**RECITALS:**

A. The Property is located in the City of Santa Fe Springs, Los Angeles County, California, as more specifically described in Exhibit "A". The Property is also more specifically described as Los Angeles County Assessor's Parcel No. 8026-001-042. The Property was formerly used as a waste oil storage and transfer facility. The Property was also used for the disposal of oil field drilling waste from the 1920's to 1985.

B. On March 31, 1992, the Department issued its Imminent Or Substantial Endangerment Order and Remedial Action Order HSA I &/SE91/92-009 as amended on October 26, 1992 ("Order").

C. Pursuant to the Order, a Remedial Investigation, including a Base Line Health Risk Assessment, was conducted, in order to define the nature and extent of contamination at the Property. Twenty-nine chemicals of concern were quantitatively evaluated in the risk assessment. The total non-cancer hazard index for all chemicals and all exposure pathways was

significantly less than 1.0 for the future occupational receptor under the reasonable maximum exposure ("RME") scenario. Therefore, there is not a concern for potential chronic adverse health effects at the Property for future occupational populations. The estimated cancer risk for the future occupational receptor was  $9 \times 10^{-6}$  (nine in one million) under the RME scenario and, using more typical exposure parameters for the future occupational receptor results, was only  $4 \times 10^{-7}$  (four in ten million). Under the RME scenario, exposure to polychlorinated biphenyls ("PCBs") contributed to approximately ninety-six (96%) of the cancer risk. A Feasibility Study was also prepared, which evaluated the possible remedial alternatives and recommended the most appropriate alternative for the Property. A Remedial Action Plan ("RAP") was submitted for public comment and Department approval. On June 13, 1997, the RAP was approved and adopted by the Department. The RAP required the construction of a cap on soils containing PCBs. The parking lot/cap so constructed is located on a small portion of the Property over the area containing the PCBs depicted on Exhibit "C" attached hereto and described on Exhibit "D" attached hereto, which area of the Property is hereinafter referred to as the "Affected Property".

D. The Department has since determined, based on information available to the Department, that the remedial measures required by the terms of the RAP have been undertaken to the satisfaction of the Department. The Department has further determined that, based on information available to the Department, the Property no longer presents any significant existing or potential hazard to present or future public health or safety, provided that the parking lot/cap constructed in accordance with the RAP is maintained over the Affected Property and certain precautions are taken in connection with any excavation or earth moving activity performed on the Affected Property, and further provided that certain land use restrictions are observed.

E. Pursuant to California Civil Code Section 1471(c), the Department has determined that this Covenant is reasonably necessary to protect present or future human health or safety or the environment as a result of the presence on the land of hazardous materials defined in California Health and Safety Code Section 25260. The Covenantor and the Department therefore intend that the parking lot/cap constructed pursuant to the RAP be maintained and the use of the Property be restricted as set forth in this Covenant. This Covenant shall also serve to provide public notice that the obligation to maintain and repair the parking lot/cap constructed pursuant to the RAP satisfies all requirements of the Order, and that no further remedial action will be required by the Department in connection with the conditions existing on the Property.

## **ARTICLE I**

### **DEFINITIONS**

1.1 Department. "Department" shall mean the California State Department of Toxic Substances Control and shall include its successor agencies, if any.

1.2 Improvements. "Improvements" shall mean all buildings, roads, driveways, regrading, landscaping and paved parking areas, constructed or placed upon any portion of the Property but shall not include any building interior improvements.

1.3 Occupant. "Occupant" shall mean any holder of a leasehold interest in the Property which entitles the leasehold interest holder to the right to occupy all or any portion of the Affected Property. "Occupant" shall not include a person that is a lender as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601 et. seq., as it presently exists or may hereafter be amended from time to time.

1.4 Owner. "Owner" shall mean and refer to one or more persons or entities who are, alone or collectively, the record owner of the fee simple title to all or any portion of the Property.

1.5 Excavation. "Excavation" shall mean the drilling or boring of any holes through the parking lot/cap constructed pursuant to the RAP or excavation of earth from below the ground surface of the Affected Property.

1.6 Earth Movement. "Earth Movement" shall mean the movement of earth extracted from below the ground surface from any one location of the Affected Property to any other location of the Affected Property.

1.7 Contaminated Soil. "Contaminated Soil" shall mean soils containing PCBs in concentrations exceeding one milligram per kilogram (1 mg/kg).

1.8 Property. The Property consists of all of the land more particularly described on Exhibit "A" attached hereto and incorporated herein by this reference, and as depicted on Exhibit "B" attached hereto, but shall not include any buildings now existing or to be constructed on the land.

1.9 Order. "Order" shall have the meaning given such term in Paragraph B. of the Recitals set forth above.

1.10 PCBs. "PCBs" shall have the meaning given such term in Paragraph C. of the Recitals set forth above.

1.11 RAP. "RAP" shall have the meaning given to such term in Paragraph C. of the Recitals set forth above.

1.12 City. "City" shall mean the City of Santa Fe Springs, California.

1.13 Affected Property. "Affected Property" shall have the meaning given such term in Paragraph C. of the Recitals set forth above.

1.14 Restrictions. "Restrictions" shall have the meaning given such term in Section 2.1 hereof.

## ARTICLE II EFFECT OF COVENANT

2.1 Restrictions to Run with the Land. This Covenant sets forth, for the mutual benefit of the Property, the Owners and Occupants thereof, the People of the State of California, and the Department, protective provisions, covenants, restrictions, and conditions (collectively referred to as "Restrictions"), upon and subject to which the Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and all of the Restrictions shall run with the land, shall inure to the benefit of, and pass with each and every portion of the Property, and shall apply to and bind the respective successors in interest thereof for the benefit of the Department. Each and all of the Restrictions are imposed upon the entire Property unless expressly stated as applicable only to a specific portion of the Property. Each and all of the Restrictions are imposed pursuant to California Health and Safety Code sections 25222.1, 25355.5 and 25356.1. Each and all of the Restrictions shall run with the land pursuant to said Sections 25222.1, 25355.5 and 25356.1, and California Civil Code section 1471. Each and all of the Restrictions are for the benefit of the Department and shall be enforceable by the Department.

2.2 Concurrence of Owners Presumed. All Owners and Occupants of all or any portion of the Property shall be deemed by their purchase, lease or possession of such Property, to have knowledge of, and be in accord with, the foregoing and to agree for and among themselves, their heirs, successors, and assignees, and the agents and employees, of such Owners, Occupants, heirs, successors, and assignees, that the Restrictions as herein set forth must be adhered to for the benefit of the Department and of future Owners and Occupants and that their interest in the Property shall be subject to the Restrictions contained herein.

2.3 Incorporation Into Deeds and Leases. The Restrictions contained herein, including, but not limited to, the provisions regarding the Department's authority to enforce the Covenant, shall be incorporated by reference in each and every deed and lease of all or any portion of the Property, with the exception that this Paragraph 2.3 shall not be interpreted to require the Restrictions to be incorporated by reference in any lease in which the tenant, under the terms of the lease, would not be deemed an Occupant of the Property.

2.4 Effect of Recitals. The statements set forth in the Recitals are hereby declared to be true and correct.

## ARTICLE III DEVELOPMENT, USE AND CONVEYANCE OF THE PROPERTY

3.1 Restrictions on Use. Covenantor promises to restrict the use of the Property as follows:

3.1.1 The Owner shall at all times maintain or cause to be maintained in good order, condition and repair, the parking lot/cap constructed pursuant to the RAP so as to cover any Contaminated Soil located on the Affected Property. The parking lot/cap will be monitored and maintained after construction is completed in accordance with the

operations and maintenance requirements set forth in the Remedial Design and Implementation Plan to be developed pursuant to the RAP to ensure that a sloped paved surface is maintained at all times at a minimum one percent (1%) grade to effectively facilitate surface water runoff and prevent ponding. Repairs to the paved surface will be made as necessary to assure that the minimum slope is maintained. The paved surface constructed will be periodically inspected for cracks, discontinuities, and ponding of surface water in accordance with the operations and maintenance requirements set forth in the Remedial Design and Implementation Plan to be developed pursuant to the RAP. The side slopes along the perimeter of the paved surface will be inspected for signs of erosion. Repairs to the pavement and the side slopes will be made as necessary to impede infiltration of surface water.

3.1.2 In the event that following the construction of the parking lot/cap any Earth Movement or Excavation is proposed to occur upon any portion of the Affected Property, the Owner or Occupant shall:

A. Notify the Department of such proposed Earth Movement or Excavation thirty (30) days prior to the beginning of such Earth Movement or Excavation;

B. Submit a Soil Management Plan and a Health and Safety Plan to the Department for review and approval prior to conducting any Earth Movement or Excavation. No Earth Movement or Excavation shall be permitted on the Affected Property except in accordance with the Soil Management Plan and the Health and Safety Plan approved by the Department.

C. Any Contaminated Soils brought to the surface by Earth Movement or Excavation shall be managed in accordance with all other applicable provisions of state and federal law.

3.1.3 Neither the Affected Property, nor any portion thereof, shall be used for residential purposes, hospitals for humans, schools for persons under 21 years of age, day-care centers for children, or any permanently occupied human habitation (including hotels or motels which are used as a permanent residence) without the prior written approval of the Department. The Affected Property, and any portion thereof, may be used for industrial or commercial purposes as authorized from time to time by the City, except as specifically prohibited in this Paragraph 3.1.3.

3.1.4 Covenantor agrees that all Owners and Occupants shall grant the Department reasonable right of entry and access to the Property for inspection, monitoring, and other activities consistent with the purposes of this Covenant.

3.2 Conveyance of Property. Within thirty (30) days after the closing of any sale, lease, or other conveyance of all or any portion of the Property, the former Owner (in the case of a sale) or Occupant (in the case of a lease) and the then current Owner or Occupant of the Property or part thereof conveyed shall provide written notice to the Department of the name and

address of all the then Owners and/or Occupants of the Property or part thereof, conveyed. The Department shall not, by reason of the Covenant, have authority to approve, disapprove or otherwise affect any sale, lease, or other conveyance of the Property except as otherwise provided by law. Upon the sale or transfer of the entire interest of the Owner in the Property (including Covenantor), such Owner (including Covenantor) shall be released and relieved of any further liability or obligation under this Covenant. Upon the termination of the leasehold interest of any Occupant in the Affected Property, such Occupant shall be released and relieved of any further liability or obligation under this Covenant.

### 3.3 Enforcement.

3.3.1 Failure of any Owner or Occupant to comply with any of the requirements set forth in Paragraph 3.1.3 above, shall be grounds for the Department, by reason of the Covenant, to require the Owner or Occupant to discontinue any use of the Property in violation of Paragraph 3.1.3. Failure to observe the Restrictions set forth in Paragraph 3.1 shall be grounds for the Department to pursue any remedy provided by law to enforce the provisions of Paragraph 3.1. Any costs reasonably and necessarily incurred by the Department to enforce the provisions of Paragraph 3.1 shall be recoverable from the Owner or the Occupant of the Property determined in the final disposition of the enforcement action to have failed to observe the Restrictions.

3.3.2 Covenantor shall have no obligation to enforce or to police the observance of the Restrictions set forth herein by other Owners or Occupants of the Property or any portion thereof. This Covenant shall not create any private right of action against Covenantor or any other Owner or Occupant of the Property or any portion thereof.

3.4 Rights of Mortgagees. No breach of any covenant, condition or restriction herein contained, or any enforcement thereof, shall defeat or render invalid the lien of any first mortgage or deed of trust made in good faith now or hereafter executed upon all or any portion of the Property, provided, however, that if any such property is sold under a foreclosure of any mortgage or under the provisions of any deed of trust, any purchaser at such sale and its successors and assigns shall hold any and all property so purchased subject to all of the covenants, conditions and restrictions contained in this Covenant.

## ARTICLE IV VARIANCE TERMINATION AND AMENDMENT

4.1 Variance. Any Owner, or with the Owner's written consent, which shall not be unreasonably withheld, any Occupant of the Property or any portion thereof, may apply to the Department for a written variance from the provisions of this Covenant. Such application shall be made in accordance with Section 25233 of the California Health and Safety Code.

4.2 Termination. Any Owner, or with the Owner's written consent, which shall not be unreasonably withheld, any Occupant of the Property or any portion thereof, may apply to the Department for a termination of the Covenant as it applies to all or any portion of the

Property owned or occupied by the applicant. Such application shall be made in accordance with Section 25234 of the California Health and Safety Code.

4.3 Amendment. This Covenant may be amended from time to time in a writing signed by the Director of the Department or his or her designee, and all of the then Owners of the Property, or any portion thereof, which remains subject to this Covenant. Any such amendment shall be effective only upon the date any such amendment is filed for recording in the official records of the County of Los Angeles, State of California.

4.4 Term. Unless terminated in accordance with Paragraph 4.2 above, by law or otherwise, this Covenant shall continue in effect in perpetuity.

#### **ARTICLE V** **EFFECT OF ISSUANCE OF RAP AND IMPLEMENTATION THEREOF**

5.1 Effect of Approval of the RAP. By approving the RAP, the Department determined, based on information available to the Department, that the remedial measures required by the RAP would remediate any significant existing or potential hazard to present or future public health or safety from conditions existing on the Property.

5.2 No Further Action Based on Implementation of RAP. The Department subsequently determined, based on information available to the Department, that the remedial measures undertaken in accordance with the RAP have satisfied any significant existing or potential hazard to present or future public health or safety, and provided that the parking lot/cap is maintained and the precautions undertaken pursuant to the terms of this Covenant, there no longer exists any significant existing potential hazard to present or future public health or safety from conditions existing on the Property. Based on the foregoing, the Department has determined that no further action will be required in connection with the conditions existing on the Property.

#### **ARTICLE VI** **MISCELLANEOUS**

6.1 No Dedication Intended. Nothing set forth herein shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property or any portion thereof to the general public or for any purposes whatsoever.

6.2 Notices. Whenever any person shall desire to give or serve any notice, demand, or other communication with respect to this Covenant, each such notice, demand, or other communication shall be in writing and shall be deemed effective (i) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served or official of a government agency being served, or (ii) three (3) business days after deposit in the mail if mailed by United States mail, postage paid certified, return receipt requested. Any party may change its address by notice to the other party in the manner set forth above. The following addresses shall be effective as of the date of this Covenant.

Covenantor:

BC Santa Fe Springs, LLC  
c/o Bravante-Curci Investors, L.P.  
717 Lido Park Drive  
Lido Peninsula  
Newport Beach, California 92663

Department:

California Department of Toxic Substances Control  
Statewide Cleanup Operations Division  
Southern California Branch A  
1011 N. Grandview Avenue  
Glendale, California 91201  
Attention: Hamid Saebfar, Chief

6.3 Partial Invalidity. If any portion of the Covenant is determined to be invalid for any reason, the remaining portion shall remain in full force and effect as if such portion had not been included herein.

6.4 Article Headings. Headings at the beginning of each article of this Covenant are solely for the convenience of the parties and are not a part of the Covenant.

6.5 Recordation. This instrument shall be executed by all Owners of the Property and by the Director, California Department of Toxic Substances Control, or his or her designee. This instrument shall be filed by the Covenantor for recording in the Official Records of the County of Los Angeles, State of California within ten (10) days after the Effective Date (defined in Section 6.6 below). Covenantor shall provide the Department a copy of the Covenant marked as received for recording by the County of Los Angeles. Upon receipt of the Covenant marked as recorded, Covenantor shall provide a copy of such document to the Department.

6.6 Effective Date. This Covenant shall be effective upon such date that the Covenant is fully executed by Covenantor and the Department.

///

///

///

///

///

///



6.7 Counterparts. This Covenant may be executed in counterparts, each of which shall be deemed an original but all of which, when taken together, shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties execute this Covenant as of the date set forth above.

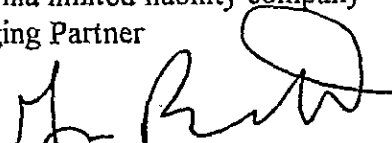
BC SANTA FE SPRINGS, LLC,  
a Delaware limited liability company

By: Biltmore Advisors, LLC, a  
California limited liability company  
Managing Partner

By:

Name:

Its:

  
George Bravante  
Managing Member

CALIFORNIA DEPARTMENT OF TOXIC  
SUBSTANCES CONTROL

By:

Hamid Saebfar, Chief  
Statewide Cleanup Operations Division  
Southern California Branch A

6.7 Counterparts. This Covenant may be executed in counterparts, each of which shall be deemed an original but all of which, when taken together, shall constitute but one and the same instrument.


IN WITNESS WHEREOF, the parties execute this Covenant as of the date set forth above.

BC SANTA FE SPRINGS, LLC,  
a Delaware limited liability company

By: Biltmore Advisors, LLC, a  
California limited liability company  
Managing Partner

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

CALIFORNIA DEPARTMENT OF TOXIC  
SUBSTANCES CONTROL

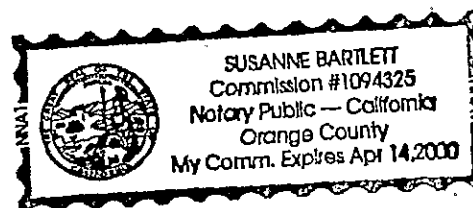
By:   
Hamid Saebfar, Chief  
Statewide Cleanup Operations Division  
Southern California Branch A

STATE OF California )  
COUNTY OF Orange ) ss.

On August 11, 1998, before me, Susanne Bartlett a Notary Public in and for said state, personally appeared George Bravaat personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Susanne Bartlett  
Notary Public in and for said State



STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ ) ss.

On \_\_\_\_\_, before me, \_\_\_\_\_, a Notary Public in and for said state, personally appeared \_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public in and for said State

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, a Notary Public in and for said state, personally appeared \_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

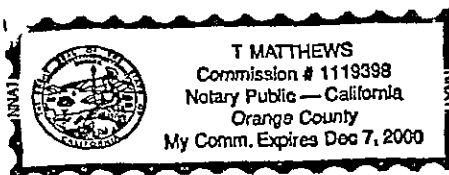
\_\_\_\_\_  
Notary Public in and for said State

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF ORANGE )

On August 18, 1998, before me, T Matthews, a Notary Public in and for said state, personally appeared HAMID Saebfar, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

T Matthews  
\_\_\_\_\_  
Notary Public in and for said State



## LEGAL DESCRIPTION OF PROPERTY

The land referred to herein is situated in the State of California, County of Los Angeles, and is described as follows:

THAT PORTION OF THE NORTH HALF OF THE NORTHWEST QUARTER OF SECTION 8, TOWNSHIP 3 SOUTH, RANGE 11 WEST, SAN BERNARDINO MERIDIAN, IN THE CITY OF SANTA FE SPRINGS, LYING WEST OF ATCHISON, TOPEKA AND SANTA FE RAILROAD RIGHT OF WAY.

EXCEPT THEREFROM ALL OIL, MINERALS AND MINERAL RIGHTS, ORES AND METALS AND OTHER USEFUL AND VALUABLE MINERAL DEPOSITS OF EVERY KIND, CHARACTER AND DESCRIPTION, INCLUDING IN PART ASPHALT, TAR, GAS, OIL, PETROLEUM AND OTHER HYDROCARBONS THAT MAY BE OR HEREAFTER BE FOUND, DEPOSITED, CONTAINED OR DEVELOPED, IN, UPON, FROM OR UNDER, OR THAT MAY BE MINED, EXTRACTED, PUMPED OR WITHDRAWN IN ANYWAY IN, UPON, FROM OR UNDER ALL OR ANY PART OF SAID LAND TOGETHER WITH THE RIGHT TO GO AND BE UPON THE NORTH 500 FEET OF SAID LAND (BUT NOT ANY OTHER PART THEREOF) FOR THE PURPOSE OF EXTRACTING AND REMOVING SAME AS EXCEPTED AND RESERVED BY JULIA M. BAKER, A WIDOW, IN THE DEED RECORDED FEBRUARY 21, 1935 IN BOOK 13278 PAGE 172, OFFICIAL RECORDS, AND REGISTERED FEBRUARY 4, 1935 AS DOCUMENT NO. 1451-D.

EXHIBIT "A"



POB  
NORTHWEST CORNER SECTION 8  
T3S, R11W, SBM PER RS 48/18

LAKELAND ROAD

BLOOMFIELD AVENUE

50° 07' 18" W 140.00'

WEST LINE SECTION 8

S89° 52' 42" E 170.00'

50° 07' 18" W 162.00'

100'

"AFFECTED  
PROPERTY"



1" = 60'



**WILLDAN ASSOCIATES**  
ENGINEERS • PLANNERS

12700 CROSSROADS PARKWAY SOUTH, INDUSTRY, CA, 91746  
(626) 908-6200

SKETCH OF THE "AFFECTED PROPERTY"  
DESCRIBED IN EXHIBIT "D"  
IN THE CITY OF SANTA FE SPRINGS  
COUNTY OF LOS ANGELES  
STATE OF CALIFORNIA

SCALE:	1" = 60'	DATE	7-20-98
DRAWN BY:	DB	JOB NO.:	08170-0633-6650
CHECKED BY:	OK	FIELD BK.:	

EXHIBIT "C"

LEGAL DESCRIPTION OF AFFECTED PROPERTY

The Affected Property referenced in the Covenant to which this is attached is situated in the State of California, County of Los Angeles, and is described as follows:

That portion of the North one-half of the Northwest one-quarter of Section 8, Township 3 South, Range 11 West, San Bernardino Meridian, in the City of Santa Fe Springs, County of Los Angeles, State of California lying within a strip of land 100.00 feet wide, the Westerly line of which is described as follows:

Beginning at the Northwest corner of said Section 8, said corner also being the centerline intersection of Bloomfield Avenue and Lakeland Road, as shown on a Record of Survey filed in Book 48, page 18 of Records of Survey, in the office of the County Recorder of said County; thence, along the West line of said section, South  $0^{\circ}07'18''$  West, 140.00 feet; thence, at right angles, South  $89^{\circ}52'42''$  East, 170.00 feet to the True Point of Beginning; thence, parallel with said West line, South  $0^{\circ}07'18''$  West, 162.00 feet to the Point of Termination.

EXHIBIT "D"